

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Chad Schwartz,**  
Petitioner-Appellant,

**v.**

**Black Hawk County Board of Review,**  
Respondent-Appellee.

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**ORDER**

**Docket No. 11-07-1490**  
**Parcel No. 9014-35-254-012**

On April 16, 2013, the above-captioned appeal came on for a telephone hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Chad Schwartz was self-represented. Attorney David Mason was counsel for the Black Hawk County Board of Review and represented it at hearing. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Chad Schwartz, owner of property located at 1405 West Lone Tree Road, Cedar Falls, Iowa, appeals from the Black Hawk County Board of Review decision reassessing his property. According to the property record card, the subject property is a one-story, frame dwelling built in 1964 with 1430 square feet of total living area. The dwelling has a full basement with 450 square feet of finish, a 288 square-foot enclosed porch, 217 square feet of wood deck, and a 320 square-foot, attached garage. The dwelling has a 4+05 quality grade (average), is listed in normal condition, and is situated on 0.479 acres.

The real estate was classified as residential on the initial assessment of January 1, 2011, and valued at \$165,450, representing \$27,450 in land value and \$138,000 in dwelling value.

Schwartz protested to the Board of Review on the grounds that the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a)(1); that the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2); that there is an error in the assessment under section 441.37(1)(a)(4); and there was a change downward in the value since the last assessment under sections 441.37(1)(b) and 441.35(2). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). He claimed the actual value of the property was \$113,590, allocated \$18,380 to land value and \$95,210 to dwelling value. Schwartz' Petition to the Board of Review stated that there was no finished basement area and no whirlpool bath. The Board of Review denied the protest.

Schwartz then filed his appeal with this Board and claimed the same grounds. He asserts the actual value of the property is \$120,000, allocated \$18,000 to land value and \$102,000 in dwelling value.

Schwartz provided numerous photographs of the subject property and testified regarding repairs needed to the roof, siding, interior walls, and flooring. He identified examples of inferior workmanship, foundation issues, and low quality materials throughout the property. Schwartz testified that in November 2010 he obtained a building permit and immediately removed the basement bath and finish. He purchased the property in 2005 for \$118,000 in a distress sale.

Schwartz selected five properties in the immediate area he considered comparable for equity analysis. He provided photographs of each property, the annual taxes, and a short description of its features. Like Schwartz' property, they all have roughly one-half acre sites. He calculated the assessed value per acre for the sites. Four of his equity comparables are located on Hiawatha Road and

the assessed values were roughly \$38,000 per acre. The value for the Pocahontas property was roughly \$63,200 per acre. Schwartz' property is assessed at approximately \$57,300 per acre. We note the properties on Hiawatha Road are located in the Green Acres Addition, whereas the Pocahontas property and Schwartz' property are located in a different map area. These location differences may account for the difference in land values. The following summarizes his chart.

Property	Map Area	Acres	Assessed Value	AV/Acre
Subject	NCDRFLS-03	0.479	\$ 27,450	\$ 57,307
2607 Hiawatha	NCDRFLS-02	0.509	\$ 19,060	\$ 37,446
2601 Hiawatha	NCDRFLS-02	0.502	\$ 19,330	\$ 38,506
2525 Hiawatha	NCDRFLS-02	0.485	\$ 18,900	\$ 38,969
2517 Hiawatha	NCDRFLS-02	0.484	\$ 18,900	\$ 39,049
3109 Pocahontas	NCDRFLS-03	0.374	\$ 23,630	\$ 63,181

In comparing the improvements, Schwartz included the basement finish with the main floor living area to arrive at the total living area. This is an incorrect method. For example, he indicates the property located at 2607 Hiawatha has 1234 square feet of living area when it has only 1084 square feet of above-grade area. He lists the 2601 Hiawatha Road property as having 1608 square feet of living area when it has only 1008 square feet of above-grade living area. Lastly, he indicates the property located at 2525 Hiawatha Road has 1599 square feet of living area, when it has 974 square feet of above-grade living area. We find these differences are significant and could distort any uniformity analysis. Therefore, Schwartz' analysis is an unreliable indicator of whether the assessor's methods were uniformly applied.

Additionally, two of these properties sold recently; however, only the sale of the property located at 2601 Hiawatha Road was a normal transaction. It sold for \$119,900 in June 2011 and its assessed value is \$125,280. Because more than one comparable property is necessary to support a claim of inequitable assessment, this information is given no consideration.

At hearing, Deputy Assessor TJ Koenigsfeld testified the original 2011 assessment included basement finish because the assessor's office was not aware the basement finish had been removed. He further admitted the subject's correct assessment for 2011 should be \$156,740.

County Assessor Tami McFarland testified the assessor's office arrived at the \$156,740 valuation upon review of comparable properties and a determination the 2011 assessment was high. She also indicated the \$156,740 valuation includes basement finish. McFarland testified the \$156,740 for 2011 should be further reduced by \$9,040 for 2012 after considering the lack of basement finish. This would result in a valuation of \$147,700 for 2012.

At hearing, McFarland indicated the assessor's office would arrange for an inspection of the property. On July 18, 2013, McFarland submitted a letter indicating the assessor's office completed an inspection of the subject property on April 17th. McFarland states the inspection discovered several deficiencies which suggest the property's condition should be listed "below normal," putting its 2011 assessed value at \$154,070. Taking the changed condition and removal of the bathroom and basement finish into account, McFarland states the correct 2012 assessed value should be \$145,910.

Reviewing all the evidence, we find the preponderance of the evidence supports Schwartz' claims of over-assessment and error, however it does not support his inequity claim.

### ***Conclusions of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

*Id.* at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires

assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. Schwartz did not prove by a preponderance of the evidence that his property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

The properties offered by Schwartz were not sufficiently similar to provide this Board with an accurate determination of the subject property's market value because points of difference between them and the subject property were not taken into account. Similar properties do not have to be identical but should have substantially similar characteristics. The sales prices should be adjusted to accordingly reflect the difference between the sale and the subject property. In this case, the land size, square footage, basement finish, as well as other amenities required adjusting to make a truly comparable analysis.

However, McFarland and Koenigsfeld each testified the assessment was too high. Further, McFarland's July letter concedes the property is over assessed and states the proper assessment is \$154,070 for 2011 and \$145,910 for 2012. Based on this concession, we find the subject property is over assessed and modify the assessment.

Section 441.37(1)(a)(4) is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(a)(4), on which the taxpayer rests his claim, allows a protest on the ground "[t]hat there is an error in the assessment." § 441.37(1)(a)(4). Schwartz provided sufficient evidence to show there was an error in his assessment regarding the bathroom count and basement finish supporting a reduction in the assessed value. He testified he removed the basement finish and bath prior to January 1, 2011.

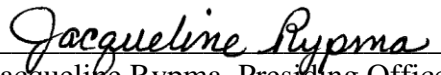
Viewing the evidence as a whole, we determine that the preponderance of the evidence does not support Schwartz' claim of inequitable assessment, but does support his claims of over-assessment and error. Therefore, we modify the property assessment as determined by the Board of Review.

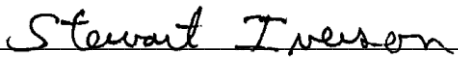
The Appeal Board determines the subject property's assessment shall be \$145,910 as of January 1, 2011.

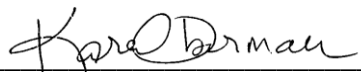
THE APPEAL BOARD ORDERS that the 2011 assessment as determined by the Black Hawk County Board of Review is modified as set forth herein.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Black Hawk County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly

Dated this 24th day of July, 2013.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>July 24, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	